

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 01-2774

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United States of America,

Appellee,

v.

Patricio Murillo,

Appellant.

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Appeal from the United States  
District Court for the  
District of Nebraska

[UNPUBLISHED]

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Submitted: December 7, 2001  
Filed: December 26, 2001

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Before McMILLIAN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

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PER CURIAM.

Patricio Murillo appeals from the final judgment entered in the District Court<sup>1</sup> for the District of Nebraska upon his guilty plea to re-entering the United States illegally after deportation following his conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). The district court sentenced appellant to 57 months imprisonment and 3 years supervised release. For reversal, appellant argues that the district court mistakenly believed it lacked authority to grant him a

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<sup>1</sup>The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

downward departure on the basis of cultural assimilation. For the reasons discussed below, we affirm the judgment of the district court.

We are satisfied from our review of the sentencing transcript that the district court was aware of the case Murillo relied upon, United States v. Lipman, 133 F.3d 726 (9th Cir. 1998), and that it proceeded to assume, at least for the sake of argument, that it possessed authority to depart on the basis of cultural assimilation. Its discretionary decision not to depart is therefore unreviewable. See United States v. Edwards, 225 F.3d 991, 992-93 (8th Cir. 2000), cert. denied, 531 U.S. 1100 (2001).

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.